

SALE AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of December, 1983, by and between the CITY OF BOSTON, acting by and through its Public Facilities Department, and MYRNA PUTZIGER and RICHARD H. RUBIN, as they are Trustees of the GOVERNMENT CENTER GARAGE REALTY TRUST.

The parties hereto do hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 101: Defined Terms.

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

a. "Additional Property" shall mean the real property owned by the City of Boston as shown and described in Exhibit A-1 hereto.

b. "Architect" shall mean the firm of Mintz Associates, Architects/Planners, Inc., or such firm as shall be substituted by the Developer with the prior written consent of the City.

c. "Authority" shall mean the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts.

d. "City" shall mean the City of Boston, Massachusetts.

e. "Closing Date" shall mean the date referred to in Section 204 of this Agreement.

f. "Deed" shall mean the instrument, to be recorded in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Property is conveyed to the Developer.

g. "Design Documentation" shall mean the plans of the Architect and other design documentation heretofore approved by the City and the Authority, as listed in Exhibit B hereto.

h. "Developer" shall mean Myrna Putziger and Richard H. Rubin, as they are Trustees of the Government Center Garage Realty Trust u/d/t dated November 1, 1983, recorded with Suffolk County Registry of Deeds in Book 10615, Page 058, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise.

i. "Final Working Drawings and Specifications" shall mean complete working drawings and specifications approved by the City, suitable for bidding, including such drawings and specifications for facade treatment and samples of materials.

j. "Improvements" shall mean the construction and landscaping to be done by the Developer on the Property and the Additional Property pursuant to the Design Documentation, the Final Working Drawings and Specifications, and any approved modifications thereof.

k. "Plan" shall mean the Government Center Urban Renewal Plan, adopted by the Boston Redevelopment Authority on April 3, 1963 and approved by the City Council of the City of Boston on May 25, 1964 recorded with Suffolk County Registry of Deeds at Book _____, Page _____, as it may be

amended in accordance with the provisions therein contained. The "term of the Plan" shall mean a period of forty (40) years from and after May 25, 1964.

1. "Property" shall mean the land and the improvements which are now and in the future may be located thereon in Boston, Massachusetts, as more fully shown and described in Exhibit A hereto, with the exception of certain fixtures and equipment owned by the City and located thereon as of the date of this Agreement as described in Exhibit C hereto.

ARTICLE II TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Covenant of Sale.

Subject to all of the terms, covenants and conditions of this Agreement, the City agrees to sell and convey and the Developer covenants and agrees to purchase the Property.

Section 202: Condition of Land to be Conveyed.

The City and the Developer covenant and agree that the Property shall be conveyed "as is" in the condition in which it exists at the time of delivery of the Deed, free of all tenants or occupants including, without limitation, the garage operator heretofore operating the garage on the property (except as the Developer may elect to have such operator continue to operate the Garage after the delivery of the Deed hereunder).

Section 203: Purchase Price and Payment Therefor.

The purchase price for the Property shall be twenty-two million dollars (\$22,000,000.00) of which one million dollars (\$1,000,000.00) has been paid as of this date as a deposit and the balance of twenty-one million dollars (\$21,000,000.00) shall be paid on the Closing Date by certified or bank check in Boston funds drawn to the order of the City. Such deposit shall be held by [name of bank], as escrow agent, and shall be disposed of in accordance with provisions hereinafter contained. Any interest earned on such deposit shall be solely for the account of the City.

Section 204: Time of Sale and Conveyance.

The sale and conveyance and delivery of possession of the Property and the purchase of the same by the Developer, shall take place at such date as may be agreed upon by the parties, no later than December 30, 1983, at the office of the Public Facilities Department of the City at 26 Court Street, 6th Floor, Boston, Massachusetts, or at such other place as the City may designate.

Section 205: Title and Instrument of Conveyance.

The sale and conveyance shall be by Quitclaim Deed conveying title to the Property subject to all liens, encumbrances, easements and restrictions.

Section 206: Federal Tax Stamps and Other Closing Costs.

The Developer shall pay the costs of any Federal or State documentary tax stamps which shall be required, and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed. It is understood and agreed by the parties hereto that this Agreement shall not be recorded prior to the recording of the Deed.

Section 207: Adjustments.

The City shall pay all operating costs of the Property allocable with respect to any period before delivery of the Deed hereunder. The Developer shall pay all operating costs of the Property allocable with respect to any period after delivery of the Deed hereunder. Sewer and water charges and assessments allocable with respect to any period after delivery of the Deed hereunder shall be paid by the Developer, together with a payment in lieu of taxes allocable to the days ensuing in the fiscal year after the date of the deed computed in accordance with Section 63A of Chapter 44 of the General Laws of Massachusetts.

Section 208: Default by City.

In the event that the City shall be unable to make conveyance or to deliver possession of the Property as provided herein, then the deposit shall be refunded, all obligations of the parties hereunder shall cease and this Agreement shall be void and the parties without recourse to the parties hereunder, unless the City shall elect to use reasonable efforts to make conveyance or to deliver possession as herein agreed, as the case may be, in which event the City shall give written notice thereof to the Developer at or before the time for performance by the City hereunder, and thereupon the time for the performance by the City shall be extended for a period of ninety (90) days, or such longer period as the City and the Developer shall mutually agree; provided however, that the Developer shall have the election, either at the original or any extended time for performance, to accept such possession as the City can deliver to the Property and to pay therefor without deduction, in which case the City shall go forward with the closing. In the event that at the expiration of the extended time the City shall be unable to make conveyance or to deliver possession as herein provided; then, the deposit shall be refunded, all obligations of the parties hereto shall cease, and this Agreement shall be void and without recourse to the parties hereto. The acceptance of a Deed by the Developer shall be deemed a full performance and discharge of every agreement and obligation herein contained with respect to the Property, except such as are to be performed after the delivery of the Deed.

Section 209. Default by Developer.

In the event that the Developer shall be unable to deliver the purchase price or accept delivery of the deed or possession of the Property as provided herein, with such extension of time as the City in its sole discretion shall provide, the deposit shall be paid by the escrow agent to the City as liquidated damages and this Agreement shall be void and without recourse to the parties hereto.

Section 210. Conditions Precedent to Conveyance.

The City shall not be obligated to deliver the Deed and make conveyance of the Property unless and until the Developer has furnished to the City a clean irrevocable letter of credit from an institutional lender acceptable to the City, reasonably satisfactory in form and substance to the City, in the amount of \$1,000,000, entitling the City to draw the amount of the credit in the event that, for any reason, the Improvements substantially as shown and described in the Design Documentation and approved Final Working Drawings and Specifications are not completed prior to

ARTICLE III
RESTRICTIONS AND CONTROLS UPON DEVELOPMENT

Section 301: Restrictions on Use.

(a) The Developer, for itself and its successors and assigns covenants, promises and agrees to continuously and without interruption, except in the ordinary course of operation and maintenance of the Property, (i) devote the Property to public parking use with not less than 2,000 parking spaces for standard-sized automobiles in accordance with the Parking Operations Plan included as Exhibit D hereto and (ii) without limiting the foregoing, devote not less than 20,000 square feet of ground level street frontage space on New Sudbury Street and Merrimack Street to the active retail sales of products or provision of services to the general public, and not less than _____ square feet of the structure to be constructed on Levels 10 and 11, above the parking facility, to commercial office uses, all in accordance with the Leasing Plan included as Exhibit E hereto;

(b) The covenants in subsection (a) of this Section shall be a covenant running with the land and shall terminate upon the expiration of the term of the Plan.

Section 302: Improvements and Submission of Plans.

a. The Developer shall in all respects comply with the Design Review Procedures and obtain the approvals set forth in Exhibit F to this Agreement. The Developer shall not apply for a building permit for the construction of the Improvements without the prior certification of the City that the work to be done as set forth in the permit application is in accordance with the Final Working Drawings and Specifications approved by the City in accordance with Exhibit F hereto. No work shall be done on the construction of the Improvements unless such work conforms in every respect with such approved Final Working Drawings and Specifications, except and only to the extent that modifications thereof have been requested by the Developer in writing and have been approved in writing by the City.

It is agreed that any and all Change Orders issued and implemented subsequent to approval by the City of Final Working Drawings and Specifications constitute a deviation from the approved Final Working Drawings and Specifications. The Developer agrees that no such Change Order will be issued or implemented unless such Change Order shall have been submitted to and approved in writing by the City prior to its issuance or implementation. If the City shall neither approve or disapprove in writing within thirty (30) days of receipt of such Change Order then it shall be treated as having been approved.

In the event the Developer shall fail to comply with the foregoing requirements, the City may, within a reasonable time after discovery thereof by the City, direct in writing that the Developer so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Property as are not in conformance with the approved Final Working Drawings and Specifications or any approved modifications thereof, or Change Order therefor, as to bring them into conformance therewith. The Developer shall promptly comply with such a directive. In addition to any other remedies available under this Agreement, the City may enforce the provisions of this subsection 302(a) by an action in a court of appropriate jurisdiction to compel specific performance.

b. In submitting all plans and specifications to the City for its approval, the Developer shall consider and take into account the planning and design objectives set forth in

the Plan and in the Design Documentation, and the City shall pursue such objectives in its review of and action upon the plans and specifications so submitted.

c. The Developer shall not discharge the Architect without cause or hire new or additional architects or alter or amend the contract for architectural services between the Architect and the Developer without in each instance obtaining the prior written consent of the City.

d. No sign shall be erected or placed on the exterior of any building on the Property, nor on any portion of the Property which is not enclosed within a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by the City in writing. Without limiting in any way the scope of the City's review, no sign shall be approved which does not meet the following standards. Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual use. No signs will be permitted on awnings or marquee, if any, nor on projections, if any, over the sidewalk. All signs shall be belt type. Flashing, illuminated signs, exposed neon signs or signs other than those relating to businesses on the site, if any, shall not be permitted. The covenants in this Section (d) shall be covenants running with the land.

Section 303: Time for Commencement and Completion of Construction.

a. The Developer shall begin the construction of the Improvements in accordance with the approved Final Working Drawings and Specifications not later than _____ (____) days after delivery of the Deed.

b. The Developer shall diligently prosecute to completion the construction of the Improvements and shall complete such construction not later than _____ (____) months from the date of the delivery of the Deed.

c. The Developer shall submit to the City for its approval a detailed estimated progress schedule at the time construction is begun in a format generally used in the construction of buildings. This schedule shall be resubmitted each month until the construction of the Improvements has been completed, with actual progress shown in each submission. This monthly submission shall be accompanied by a written report by the Developer citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts which shall be reasonably satisfactory to the City. Such work of the Developer shall be subject to inspection by representatives of the City, and the City shall notify the Developer promptly of any defects observed by it. Upon receipt of such notification, the Developer shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of the City.

d. Prior to the sale and conveyance and delivery of possession of the Property, the City shall permit the Developer access thereto, whenever and to the extent necessary to carry out the purposes of this Agreement. The Developer agrees to indemnify, defend (with counsel of Developer's selection, but subject to approval of the City which shall not unreasonably be withheld), and save harmless the City and Authority from and against any claims, costs and liabilities against the City or Authority arising directly or indirectly out of such entry on the Property by Developer.

e. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the beginning and completion of the Improvements shall be

covenants running with the land. This subsection shall not, however, apply against a mortgagee permitted by this Agreement unless the mortgagee shall elect to complete as permitted in Section 403, in which case the extension provisions of that Section shall apply.

Section 304: When Improvements Completed.

The construction of the Improvements shall be deemed completed for the purposes of this Agreement when built in accordance with the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved modifications thereof, and shall incontestably be deemed completed for the purposes of this Agreement upon the issuance of a Certificate of Completion by the Public Facilities Department of the City.

Promptly after completion of the Improvements in accordance with the provisions of this Agreement, the Public Facilities Department will furnish the Developer with an appropriate instrument so certifying. Such certification shall be, and it shall be so provided in the Deed and in the certification itself, a conclusive determination of satisfaction and termination of the Agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Developer and its successors and assigns, to construct the Improvements, provided that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements, or any part thereof, or the purchase of the Property.

The certification provided for in this Section shall be in such form as will enable it to be recorded in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Public Facilities Department shall refuse or fail to provide any certification in accordance with the provisions of the Section, the Public Facilities Department shall, within thirty (30) days after receipt by the City of a written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Improvements in accordance with the provisions of this Agreement or is otherwise in default in accordance with the provisions of this Agreement and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such certification.

The Developer agrees that the Public Facilities Department shall be under no obligation to issue a Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the Improvements constructed pursuant to the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved modifications thereof; provided however, that the Authority shall not be required to make an inspection hereunder unless the Developer has requested in writing that the Public Facilities Department issue a Certificate of Completion.

Section 305: Prompt Payment of Obligations.

The Developer shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Developer or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements.

Section 306: Non-Discrimination in Employment.

The Developer, for itself, its successors and assigns, agrees that in the construction of the Improvements and otherwise in the performance of this Agreement it shall comply and cause all tenants and other users of the Property to comply with all applicable laws, ordinances, regulations and orders from time to time in effect relating to non-discrimination, equal employment opportunity and affirmative action. The covenant contained in this Section 306 shall survive issuance of the Certificate of Completion hereunder.

ARTICLE IV

TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property by Developer.

a. After delivery of the Deed and prior to the completion of the construction of the Improvements in accordance with Section 304 of this Agreement, no legal or beneficial interest (which term shall be deemed to include successors in interest of such interest) shall be transferred, or caused or suffered to be transferred, except as involuntary transfer caused by the death or incapacity of any such party or except as provided in Section 402 hereof, without the written approval of the Public Facilities Department of the City; nor without such written approval, shall there be any other change in the ownership of such interests or in the relative distribution thereof or change in identity of the parties in control, or in the degree of control of the Developer, by any other methods or means. The Developer shall advise the Public Facilities Department of any and all proposed changes in such interests and shall in addition furnish the Public Facilities Department with an up-to-date list of all present and proposed new owners thereof, setting forth the amounts of such interest owned or to be owned by each owner, and with any other information relating to such proposed change which the Public Facilities Department shall require.

b. The Developer agrees that it will not, after delivery of the Deed and prior to the completion of the construction of all the Improvements, make or suffer to be made, any assignment, lease, or any other manner of transfer of its interest in the Property or portion thereof, or in this Agreement, except as provided in Section 402, and except that a contract may be entered into with a garage operation providing for the management and operation of the parking garage on the Property for a term not to exceed ____ year(s), unless it shall have complied with the following conditions:

1. The transferee or transferees shall have been approved as such in writing by the Public Facilities Department.
2. The transferee or transferees, by valid instrument in writing, satisfactory to the Public Facilities Department, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the City, all obligations of any person or persons, including the Developer, to begin, complete, and or maintain and operate, as applicable, the Improvements and all obligations of the Developer provided for in this Agreement. Provided, that: the fact that any transferee of, or any other successor in interest whatsoever to the Property, or any part thereof, shall for whatever reason, not have assumed such obligations or so agreed, shall not (unless

and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Public Facilities Department relieve or except such transferee or successor of or from obligations, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or limitations or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of or change, with respect to ownership, possession, or control, shall operate legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the City would have, had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Developer shall pay to the City the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the City's said rights, remedies, and controls as against such transferee. Therefore, in the absence of a specific written agreement by the Public Facilities Department to the contrary, no such transfer or approval thereof by the City shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements from any of its obligations with respect thereto.

3. There has been submitted to the Public Facilities Department for review, and the Public Facilities Department has approved, all instruments and other legal documents involved in effecting transfer.
4. The Developer and its transferee and transferees shall comply with such other conditions as the Public Facilities Department may find desirable in order to achieve and safeguard the purposes of this Agreement.

c. In the event of any violation by such a transferee of any part or parcel of the Property of any obligation assumed or required to be assumed under Subsection b of this Section, which violation shall occur prior to receipt of the Certificate of Completion granted pursuant to Section 304, the Developer shall be responsible, jointly and severally with the transferee, for curing or effecting the cure of such violation. If the Developer shall fail or refuse to effect such cure, the City may institute such actions or proceedings against the transferee and/or the Developer as the City deems appropriate, including actions and proceedings to compel specific performance. Payment of all costs and expenses which may be incurred by the City in instituting and prosecuting such action or proceedings shall be governed by Section 601 of this Agreement.

Section 402: Mortgage of Property by the Developer.

Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions thereof by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Developer to finance the acquisition of the Property and the development, construction, repair or reconstruction of the Improvements, or to refinance any outstanding loan or loans therefor obtained by the Developer for any such purpose; provided, however, that the Developer shall give prior written notice to the City of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the City may require.

The holder of any such mortgage (including a holder who obtains title to the Property or any portion thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this Agreement to construct or complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 403.

Section 403: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion.

a. If a mortgagee, through the operation of its contract to finance the acquisition of the Property and construction of the Improvements or by foreclosure, acquires fee simple title to the Property or any part thereof prior to the completion of the Improvements, the mortgagee shall have the following options:

1. Complete construction of the Improvements in accordance with the approved Final Working Drawings and Specifications any approved modifications thereof, and this Agreement, and in all respects comply with the provisions of this Agreement, or
2. Sell, assign, or transfer, with the prior written consent of the Public Facilities Department, fee simple title to the Property or any part thereof to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement in respect to the Property or part thereof, by written instrument satisfactory to the Public Facilities Department and recorded forthwith in the Suffolk County Registry of Deeds, or
3. Reconvey fee simple title to the Property or part thereof to the City, in which event the provisions of Section 801 relative to resale shall apply.

b. In the event that a mortgagee elects to complete construction pursuant to (a) (1) above, or sells, assigns or transfers pursuant to (a) (2) above, the City shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements, and upon such completion, the mortgagee or purchaser, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 304.

ARTICLE V
PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 501: Maintenance and Operation.

The Developer shall, at all times until the expiration of the term of the Plan, keep all improvements on the Property and Additional Property including the sculpture located thereon, in good and safe condition and repair unless such improvements shall have become uninsurable, and in the occupancy, maintenance and operation of such improvements, the Property shall comply with all laws, ordinances, codes and regulations applicable thereto.

Section 502: Additions or Subtractions to Completed Improvements.

After the Improvements or any portion thereof have been completed, the Developer shall not, until the expiration of the term of the Plan, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions to any improvements on the Property, or change the materials, design dimensions or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change will affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) without the prior written approval of the City. In the event the Developer shall fail to comply with the foregoing requirement, the City may within a reasonable time after its discovery thereof, direct in writing that the Developer so modify, reconstruct or remove such portion or portions of such improvements as were reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the City. The Developer shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change until such directive is complied with. The covenants in this ARTICLE V shall be covenants running with the land.

ARTICLE VI
INDEMNIFICATION

Section 601: Reimbursement of City and Authority in Respect of Certain Litigation.

The Developer shall pay all reasonable costs and expenses, and the amounts of all judgments and decrees which may be incurred by the City and Authority in any proceedings brought to enforce the obligations of the Developer set forth in the provisions of this Agreement. It is expressly understood, however, that the mortgagee under any mortgage permitted hereunder shall not be liable to the City and Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against the Developer except that a mortgagee who becomes a mortgagee after, and who acquires title after the Developer has become liable for any costs, expenses, judgments, decrees or damages, shall be liable for such liabilities.

ARTICLE VII
INSURANCE

Section 701: Insurance Coverage.

a. Until the expiration of the term of the Plan, the Developer shall keep all of the insurable property and equipment in respect of the Property and Additional Property insured by fire and extended insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees in the use of similar

property and equipment in the City. Such insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the Property or equipment, and, in any event, in amounts not less than eighty per centum (or eighty per centum in the case of extended coverage insurance) of the current cash value of such property or equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Developer, the mortgagee, and, subject to the rights of the mortgagee, the City as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the City.

Section 702: Non-Cancellation Clause.

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the City until after at least ten (10) days prior notice has been given to the City and Authority to the effect that such insurance policies are to be cancelled, changed or terminated at a particular time.

Section 703: City May Procure; Insurance if Developer Fails to do so.

If the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City at its option, may procure or renew such insurance, and all amounts of money paid therefor by the City shall be payable by the Developer to the City; with interest thereon at the rate of twelve per centum (12%) per annum from the date the same were paid by the City to the date of payment thereof by the Developer. The City shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by it.

Section 704: Developer's Obligations with Respect to Restoration and Reconstruction.

a. Whenever any improvements on the Property or Additional Property, or any part thereof, shall have been damaged or destroyed prior to the expiration of the term of the Plan, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such improvement, shall be deposited in full in a separate account of the Developer or of any mortgagee.

b. The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any mortgagee of record permitted hereunder and the rights of the City.

c. The Developer, with the written approval of the City and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of such improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for reconstruction, restoration, or repair shall be retained by the Developer, subject to the rights of such mortgagee and the rights of the City.

d. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to the provisions of the Plan, the Final Working Drawings and Specifications, and the provisions of this Agreement.

Section 705: Commencement and Completion of Reconstruction.

The Developer shall commence to reconstruct or repair any improvements and equipment on the Property and the Additional Property, or any portion thereof, which have been destroyed or damaged prior to the expiration of the term of the Plan, within a period not to exceed six (6) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the City may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof.

ARTICLE VIII RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A BREACH BY DEVELOPER

Section 801: Default by Developer re Design Procedures, Construction, and Transfers.

If the Developer shall fail or refuse to commence, diligently pursue or complete construction of the Improvements as provided in Article III or comply with the Design Review Procedures or obtain the approvals set forth in Exhibit F, or there is any unauthorized change in the ownership or distribution of the relative interests in the Developer or with respect to the identity of the parties in control of the Developer or degree thereof or the ownership of the Property as provided in Section 401, the City shall in writing notify the Developer of such failure or violation. The Developer shall thereupon have ninety (90) days from the receipt by it of such written notice to cure such failure or violation.

a. If the Developer does not cure such failure or violation within the 90-day period (or within such extended period of time as may be established by the City acting solely in its discretion) and if the holders of record of construction mortgages in replacement thereof do not exercise their rights to cure such violation or failure (as provided in Section 803 hereof), the Developer shall promptly transfer possession of, and reconvey, the Property and all improvements thereon, to the City without cost to the City, by Quitclaim Deed, provided that such reconveyance shall be subject to any existing mortgages thereon permitted under this Agreement. If the Developer shall fail so to reconvey, the City may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer.

b. In the event of a failure to cure under this Section, the City shall also have the right to re-enter and take possession of the Property and to terminate (and re-vest in the City) the estate conveyed by the Deed to the Developer, it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, condition subsequent to the effect that in the event of such failure to cure, the City at its option may declare a termination in favor of the City of the title, and of all the rights and interests in the Property and that such title, and all rights and interests of the Developer, and any assigns or successors in interest, in the Property, shall revert to the City; provided, that such condition subsequent and any re-vesting of title as a result thereof in the City: shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages.

c. If the Developer or a mortgagee reconveys to the City, pursuant to this Section 801 or Section 403, or if the City shall re-enter pursuant to this Section 801, the City shall undertake with due diligence to resell the Property so reconveyed or which it has so re-entered, and all of the improvements thereon, and the proceeds of such resale, together with the net income, if any, derived by the City from its operation and management of the Property subsequent to such reconveyance shall be used:

- (1) First, to reimburse the City for all costs and expenses reasonably and proximately incurred by the City, including the salaries of City personnel, in connection with the recapture, management and resale of the Property and all administrative and overhead costs in connection therewith;
- (2) Second, to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City with respect to the Property up to the time of such resale (or in the event the Property is exempt from taxation during the period of ownership thereof by the City, an amount equal to such taxes as would have been payable if the Property were not so exempt); and
- (3) Third, in their respective order of priority to pay any and all mortgage indebtedness authorized by this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property, in favor of mechanics, materialmen or subcontractors;
- (4) Fourth, to reimburse the City for expenditures made or obligations incurred with respect to the making or completion of improvements on or for the Property for which it has not otherwise been reimbursed;
- (5) Fifth, to pay or reimburse the City for any amounts otherwise owing to the City from the Developer;

- (6) Sixth, if there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Developer for and up to the amount expended by it in the purchase of the Property and Construction of the Improvements less any profit theretofore realized by the Developer from the disposition of any interest in the Property or in any individual part or parcel thereof, and any income realized by the Developer from its use of the Property or such part or parcel; and
- (7) Seventh, any balance remaining shall remain the property of the City.

Section 802: Notices of Breaches to Mortgagees.

If the City, gives written notice to the Developer of a default under this Agreement, the City shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. To facilitate the operation of this Section, the Developer shall at all times keep the City provided with an up-to-date list of names and addresses of mortgagees from whom the Developer has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the City of its address and request that the provisions of Section 906 as they relate to notices apply to it. The City agree to comply with any such request.

Section 803: Mortgagee May Cure Breach of Developer.

If the Developer has received notice from the City of a default under this Agreement and such breach is not cured by the Developer before the expiration of the period provided therefor, the holders of record of mortgages on the Property as permitted under this Agreement may cure any breach upon giving written notice of their intention to do so to the City within ninety (90) days after such holder receives such notice of breach, and shall thereupon proceed with due diligence to cure such breach.

Section 804: Remedies for Other Breaches.

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 801 for the defaults therein described shall be exclusive. The provisions of this Section 804 shall survive issuance of the Certificate of Completion hereunder.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 901: Obligations and Rights and Remedies Cumulative and Separable.

The respective rights and remedies of the City and the Developer provided by this Agreement or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 902: Amendment.

This Agreement shall constitute the entire agreement between the parties hereto; it may be amended only by an instrument in writing signed by both the City, through the Chairman of its Public Facilities Department, and the Developer.

Section 903: How Agreement Affected by Provisions Being Held Invalid.

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the requirements of applicable laws.

Section 904: Covenants to be Enforceable by City.

The covenants herein contained, which are expressly stated to be covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion thereof or any interest therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the City against the Developer (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof). In amplification, and not in restriction of the provision hereof, it is intended and agreed that the City shall be deemed a beneficiary of such covenants, both for and in its own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided.

Section 905: City's Staff and Officers Barred From Interest.

a. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor or on any obligations under the terms of this Agreement.

b. The Developer covenants that he has not employed or retained any company or person (other than a full-time bona fide employee working for the Developer) to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person (other than such an employee) any gift, contribution, fee, commission, percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 906: Approvals and Notices.

Where notices, consents, approvals, authorizations and reviews are required to be given to the City or from the City hereunder they shall be given to or obtained from the Authority acting on behalf of the City, with the exception of the issuance of the Certificate of Completion under Section 304 hereof and final approval of any transfer under Section 401 hereof which shall be given by the Public Facilities

Department of the City on behalf of the City. Where, pursuant to this Agreement, any document or proposed action by the Developer is submitted by it to the Authority on behalf of the City of the Public Facilities Department on behalf of the City, as provided herein, and the Developer has been notified in writing by the Authority or Public Facilities Department, as the case may be, that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the City with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Notices shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the principal office of the party to whom it is directed, which is initially as follows:

Developer:	Government Center Garage Realty Trust c/o McCormick & Zimble 225 Franklin Street Boston, Massachusetts 02110
City:	City of Boston Public Facilities Department 26 Court Street, 6th Floor Boston, Massachusetts 02108
Authority:	Boston Redevelopment Authority City Hall Square Boston, Massachusetts 02201

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Any requests for approvals made by Developer to the City where such approvals shall be deemed granted after a period of non-reply by the City shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE
THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY
FAILURE TO RESPOND WITHIN _____ DAYS
SHALL RESULT IN AUTOMATIC APPROVAL"

Notice and other communications to mortgagees shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the last known address of the party concerned.

Section 907: Matters to be Disregarded.

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 908: Obligations to Continue.

Except as to obligations to be performed at or prior to the time of closing of the sale and conveyance of title to and delivery of possession of the Property, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of title to and the delivery of possession of the Property to the Developer, but shall not survive issuance of the Certificate of Completion by the City except to the extent stated herein or in the Deed. The provisions of Article IX of this Agreement shall survive issuance of the Certificate of Completion.

Section 909: Excusable Delays.

For the purposes of any of the provisions of this Agreement, neither the City nor the Developer, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City or of the Developer, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In no event shall any financing difficulty or inability to secure a building permit be a cause for an extension hereunder.

Section 910: Agreement Binding on successors and Assigns.

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Developer and the public body succeeding to the interests of the City.

Section 911: Waivers.

Any right or remedy which the City or the Developer may have under this Agreement, or any of its provisions, may be waived in writing, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Developer of a right under Section 801 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 802.

IN WITNESS WHEREOF, on the ____ day of December, 1983, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

Signed, sealed and
delivered in the
presence of

CITY OF BOSTON,
PUBLIC FACILITIES DEPARTMENT
(Corporate Seal)

By _____

GOVERNMENT CENTER GARAGE REALTY
TRUST

By _____
Trustee

By _____
Trustee

MEMORANDUM

December 8, 1983

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: GOVERNMENT CENTER URBAN RENEWAL PROJECT NO. MASS. R-35
RECOMMENDING TO THE CITY OF BOSTON, ACTING BY AND
THROUGH THE PUBLIC FACILITIES DEPARTMENT, THE FINAL
DESIGNATION OF THE GOVERNMENT CENTER GARAGE REALTY TRUST,
MYRNA PUTZIGER AND RICHARD H. RUBIN TRUSTEES AS
REDEVELOPER OF DISPOSITION PARCEL 4, THE GOVERNMENT
CENTER PARKING GARAGE

The Authority on August 11, 1983 recommended the tentative designation of Richard H. Rubin Companies now known as The Government Center Garage Realty Trust, Myrna Putziger and Richard H. Rubin Trustees as redeveloper of the Government Center parking garage facility. The designation was subject to the developer incorporating in his plans the terms and conditions as outlined by the Authority in its August 11, 1983 vote.

The Authority staff has been carrying on an intense design review process and extensive negotiations with the developer and his architect, Mintz Associates, to insure a quality design and a developer proposal which complies with the conditions set forth at the time of the recommendation for tentative designation. As a result of this process, a development program has been finalized which consists of:

- An additional two floors of office space of approximately 250,000 sq. ft.
- Parking for a minimum of 2,000 cars
- Grade level retail space of approximately 20,000 sq. ft.
- Parking garage improvements, including an additional exit lane, new ticketing booths and machines and new lighting throughout the garage

The developer has agreed to make improvements to the MBTA bus waiting area and will carry out public improvements and landscaping in the overall area including new brick sidewalks, trees and planters totalling approximately \$3 M.

As you will recall, the City will receive \$22.M. for the sale of the Government Center Garage facility and will still have available over 2,000 of the parking spaces for the public. In addition, it is anticipated the City will be receiving over \$1.M. in taxes annually. The City Council, Real Property Board and Public Facilities Commission have given preliminary approval of this proposal.

Immediately upon conveyance, the developer will commence preliminary work on the garage including a complete new lighting system throughout the building which will significantly increase the lighting and security in the garage for the public.

The Authority is recommending that the developer receive from the Public Facilities Commission final designation and that the property be conveyed subject to the terms and conditions as generally outlined in the Sale and Construction Agreement, a draft of which is attached. This Agreement provides for continuing design review by the Authority including a parking operations and commercial leasing plan and sign review.

Upon conveyance of the property, the developer proposes to complete working drawings and will undertake in one phase the proposed improvements. Financing of the project will be provided by the Bank of Boston. Construction is scheduled to start in the Spring of 1984.

An appropriate vote follows:

VOTED: That the Authority recommends to the City of Boston, acting by and through its Public Facilities Commission, the final designation of the Government Center Garage Realty Trust, Myrna Putziger and Richard H. Rubin Trustees as redeveloper of the Government Center Garage facility, designated as Disposition Parcel 4 in the Government Center Urban Renewal Area, and the conveyance of the Parcel subject to the incorporation of the terms and conditions as generally outlined in the attached Sale and Construction Agreement; and said designation is subject to continued design review and approval of the redeveloper's plans by the Authority; and said designation is subject to all easements of record as well as to the terms and conditions of the Government Center Urban Renewal Plan and the Authority's Land Disposition Agreement and Deed with the City of Boston concerning this parcel, and the Director be and hereby is authorized to execute appropriate documents necessary for the transfer.



additional benches
granite crosswalks

existing trees

Note: Office elevators have direct access only
to office floors 10 and 11 and roof top

5. Construction Cost

Total estimate construction cost
including cost for "Public Improvements" \$20,000,000

Note: Total estimated cost for
"Public Improvement" 3,000,000

6. Construction Schedule

Start construction May 1, 1984
End of construction October 1, 1985

Note: All items shown on drawings will be
completed within above construction
schedule, i.e. including but not
limited to the following:

1) Public improvements

2) Enclosure for retail spaces

Note: Interior of retail space
will be completed when
tenants are selected

3) Garage elevator lobby

4) State of the Art parking equipment and graphics

5) Office lobby

6) Office floors excepting tenant improvements

CHARL H. RUBIN
SUITE 300
11140 ROCKVILLE PIKE
ROCKVILLE, MARYLAND 20852

October 18, 1983

Mr. John DeCamp, III
Vice President
First National Bank of Boston
100 Federal Street
19th Floor
Boston, Massachusetts 02110

Dear John:

Enclosed please find properly executed letters dated October 4, 1983, and October 12, 1983, together with a bank check to your order in the amount of \$10,000.00, together making up my acceptance of First National Bank of Boston's commitment for a loan on the Government Center Garage.

Please have Goulston & Storrs contact our attorney, Myrna Putziger of McCormack & Zimble, 225 Franklin Street, Boston, Massachusetts, for settlement on this matter.

Thank you for your kind consideration in this matter.

Cordially,


Richard H. Rubin

RHR/s

Enclosures

cc: Irwin Cooperman
Robert K. Rubin

No. 150852

83147116126

THE UNIVERSITY OF CHICAGO PRESS

CCC

FACTS

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CASHIER'S CHECK

RE: Commitment Deposit for Government Garage

11.1508.5211

[illegible]

ΑΥΤΗΝΟΜΙΖΕΤΑ, ΣΙΑΝΑΤΙΡ



THE FIRST NATIONAL BANK OF BOSTON
BOSTON, MASSACHUSETTS 02110

October 4, 1982

Richard H. Rubin
11140 Rockville Pike
Rockville, MD 20852

Dear Richard:

This letter will serve as the commitment of The First National Bank of Boston (hereinafter the "Lender") to grant to Richard H. Rubin or nominee (hereinafter the "Borrower") a first mortgage loan with the following terms:

Amount: \$52,000,000

Term: 5 years

Interest Rate: 1 1/4% per annum floating above the Commercial Base Rate of The First National Bank of Boston as the same is announced by the Bank at it's head office as it's base rate, with any adjustment to be effective as of the date of any change in said base rate, or

At the borrowers option, 2% per annum, floating above the Bank's 30, 60, 90 or 180 day maturing certificate of deposit rate as adjusted for reserve requirements as selected by the Borrower.

Upon receipt of a permanent loan commitment or Purchase and Sale Agreement satisfactory to the Bank and it's counsel, said rates will be reduced to 3/4% per annum floating above the Base Rate or, 1 1/2% per annum above the Certificate of Deposit rate, as defined above.

Commitment Fee: We are to receive a commitment fee of 1/4 of 1% of the initial funding amount of \$22,000,000, due and payable at the closing of the loan. Upon compliance with the terms and conditions required for the funding of the balance of the commitment, a fee equal to 1/2 of 1% of the then unadvanced portion will be due and payable at the time of the initial advance.

Our primary security is to consist of a first mortgage lien on the land and the 1,864 space multi-level garage located between New Sudbury and New Chardon Streets, straddeling Merimack Street (commonly referred to as the Government Center Garage) in downtown Boston, and any improvements or additions built thereon.

✓ The funding of the loan will occur in two phases. Phase one will be in an amount of \$22,000,000 for the purpose of acquiring the existing garage, and will be subject to (in addition to other requirements discussed in this letter): i) evidence satisfactory to the Bank and its counsel of approval by the Boston City Council and Boston Redevelopment Authority for the sale of the garage, and ii) the execution of a lease for the operation of the garage with a parking company, for a term, and in an amount satisfactory to the Bank and its counsel, and iii) evidence satisfactory to the Bank and its counsel, indicating resolution of all matters pertaining to use, occupancy, and title to the garage, including, but not limited to issues involving easements and air rights over public streets, subway tunnels, and mass transit stations.

Funding for the balance of the loan (Phase II-construction and addition of office and retail space to the existing structure) will be advanced in accordance with our normal procedures for a construction loan as detailed herein, and will be conditioned upon compliance with the following: i) approval of final plans and specifications by the Boston Redevelopment Authority, the Boston City Council, Massachusetts Bay Transit Authority, the Lender and its Consulting Engineer; and ii) approval by Lender of an engineering study addressing the adequacy of the original design and construction and analyzing the maintenance and current physical condition of the garage, both with respect to supporting the contemplated improvements and additions.

Other terms and conditions of this commitment are as follows:

1. At our option, we reserve the right to close the loan represented by this commitment letter in our own name or in the name of any one of our affiliates.
2. The loan shall be evidenced by a promissory note (the "Note") made by Borrower and payable to the order of Lender, in form and substance satisfactory to Lender and its counsel. The loan evidenced by the Note shall bear interest at the annual Interest

Rate, hereinabove set forth, on the aggregate principal amount outstanding, payable monthly in arrears, based on a 360-day year and calculated for the actual number of days that elapse. Unless otherwise stated, interest only, and no principal, shall be payable during the term. The aggregate principal amount outstanding and interest due under the Note shall be paid at maturity (original or accelerated).

3. The Note will be secured by:

a mortgage or deed of trust (the "Mortgage") in the principal amount of the Loan, encumbering the real estate which is the subject of the mortgage and construction loan, which Mortgage shall constitute a first lien on the mortgaged property subject only to such title exceptions, if any, as shall be acceptable to the Lender and its counsel; and

a first security interest in all operating permits, licences, accounts, and contract rights, and in all of the building materials, supplies, goods, equipment, furnishings, fixtures, chattels and other items of personal property of the Borrower relating to, situated on, or used or usable in connection with the construction, maintenance and/or operation of the real estate which is the subject of the mortgage and construction loan; and

a conditional assignment of all leases relating to the mortgaged premises, and of all rents, issues and profits derived from the mortgaged premises; and

the unconditional guaranty of Richard H. and Julia Lee Rubin guaranteeing payment of the loan and the full compliance and performance by the Borrower with all terms and conditions of the several loan documents evidencing and securing the construction loan including, without limitation, completion of the Project which is the subject of the construction loan in accordance with approved plans and specifications, and full payment of all obligations incurred in the completion of such work. Without limitation, the persons or entities executing the guaranty shall, jointly and severally if there be more than one, assume responsibility for all cost overruns and any other related costs and charges.

4. All improvements to the mortgaged premises shall be constructed in accordance with final plans and specifications which shall have been certified by a qualified architect to meet all Federal, State and local Governmental requirements, including, without limitation, all applicable zoning laws, building codes, environmental codes, rules, ordinances or regulations, and any necessary accommodations for handicapped persons.

5. The Borrower shall enter into a Construction Loan Agreement containing terms and conditions customarily utilized by the Lender in its construction loan activities. At the time of the first loan disbursement and at all times thereafter, there shall remain sufficient unadvanced loan proceeds to meet all costs and expenses of the project as previously approved by the Lender. Any required equity funds are to be properly expended prior to any loan advance. If at any time during the course of construction it becomes apparent, in the sole judgment of the Lender, that the then unadvanced construction proceeds are insufficient to complete construction in accordance with the approved plans and specifications, the Borrower shall invest such additional funds in the Project as may be required by the Lender to assure Project completion from the remaining loan proceeds.

Prior to closing of the loan, the Borrower shall furnish Lender with a complete detailed estimate of all direct and indirect costs which will be associated with construction of the project. Upon request of the Lender, the Borrower shall furnish such revisions thereof as may be necessary to show the cost of construction to any specific date and the estimated cost necessary to complete the Project.

6. Loan disbursements will be based upon the submission of requisitions as required by the Construction Loan Agreement, using the standard AIA form, and such requisitions are to be approved by the Borrower, Guarantor(s), the Project architect and the consulting engineer when retained on behalf of the Lender. At the Borrower's option disbursements will be made by means of a check issued by the Lender or by credit to the Borrower's account maintained with Bank of Boston. All advances against construction items will be subject to a withholding rate of 10% pending expiration of the requisite lien period or the receipt of such evidence as may be required to assure the Lender that no claim may thereafter arise with respect to any work performed, or labor or materials supplied, which might take precedence or priority over the lien of the Mortgage. Payment of requisitions shall be subject to inspection and approval by the Lender of work done and material furnished.
7. At our option, we shall require the services of an outside consulting engineer, to be engaged by the Lender at the cost and expense of the Borrower:

to make periodic inspections (approximately as of the date of each requisition from the Borrower on account of construction), for the purpose of assuring that construction to date is in accordance with the approved plans and specifications, and to

approve the borrower's then current requisition as being consistent with the obligations of the Borrower under the Construction Loan Agreement.

8. Borrower shall furnish a survey of the premises prepared in such form and containing such certifications as shall be required by the Lender and its counsel. Such survey shall be continued on new surveys furnished as often as the Lender may require reasonably. Any such survey, continuances thereof, or new surveys, must show no state of facts deemed objectionable by Lender or its counsel.
9. The Borrower shall deliver to the Lender a title insurance policy from a title insurance company approved by the Lender, written on the then current form of ALTA Lender's Policy of Title Insurance, insuring the Lender as of the date of initial closing, and again as of the date of each future advance made on account of the construction loan, that (i) the Borrower is vested with a good, marketable, and indefeasible fee simple title in the property encumbered by the Mortgage, (ii) the Mortgage constitutes a valid and subsisting first lien upon the fee title of the Borrower in the mortgaged premises, and (iii) the conditional assignment of leases and rents constitutes a valid and subsisting first assignment of such leases and rents, subject, in each case, only to such title exceptions as shall be approved by the Lender. At the option of the Lender co-insurance by, or re-insurance with, other title insurance companies authorized to do business in the Commonwealth of Massachusetts for a portion of the title insurance shall be furnished to the Lender by such companies, on such terms, and in such amounts, as the Lender may require, provided only that the aggregate of the title insurance will not exceed the amount of the loan.
10. No lease or other agreement with reference to use or occupancy of the project shall be entered into without the approval of Lender, nor shall any approved lease or agreement be modified or amended without such approval by the Lender.
11. Before employing any major contractor for the project, the Borrower shall obtain the prior approval of such contractors by Lender. All construction contracts shall be conditionally assigned to the Lender, but the Lender shall have no obligation on account of such assignment unless the Lender shall elect to assume the Borrower's position under such contracts.

At the option of the Lender, one hundred percent (100%) performance and payment bonds shall be furnished by all contractors, in form, and issued by a bonding company, satisfactory to Lender, with Lender named as a co-obligee on any bonds required to be furnished.

In addition, any agreement entered into with an architect for the project shall be submitted to the Lender for its review and approval prior to the execution of same, and any agreements so entered into shall be assigned to the Lender in the same fashion and under the same conditions as construction contracts. Furthermore, the Lender shall be furnished with a letter from such architect consenting to the Lender's use of the plans and specifications prepared by such architect, without cost to the Lender, in the event of a default under any of the loan documents. If such architect is also providing to the Borrower construction supervisory services, the architect shall agree in such letter to continue performance for the Lender, if requested to do so, in the event of any such Borrower default, upon payment by the Lender to such architect of its fees for such services.

Any contract initially approved by the Lender relating to the proposed construction shall not be amended or modified in any fashion without the prior consent of the Lender.

12. The Borrower shall furnish Lender with builder's risk completed value (non-reporting) form insurance, all in appropriate standard form for the Commonwealth of Massachusetts affording protection against such risks, and with such insurance company, as shall be approved by Lender. All insurance proceeds shall be payable first in the case of loss to Lender, as mortgagee. Insurance coverage shall be maintained so as to afford one hundred percent (100%) coverage against loss.
13. Evidence must be furnished to Lender that flood insurance is not required for this property under the Flood Disaster Protection Act of 1973. In the event flood insurance is required, Lender will require flood insurance to be maintained with respect to the mortgaged premises, to be written by a company, on such terms, in such form and for such periods and amounts, as are satisfactory to Lender and its Counsel.
14. The initial closing of this loan and future advances thereunder are subject to continued compliance with the Federal Clean Air Act and the Federal Water Pollution Control Act, as either or both are amended, and any environmental policy act applicable under the law of the Commonwealth of Massachusetts.

The undertaking of the Bank to make the loan as described in the within commitment is conditional upon the Bank being fully satisfied at the time of loan closing that the real estate being offered as security therefor is free of all potential encumbrances, liens or charges arising out of Mass. Ch. 183A of the Acts of 1983 (as the same may have been amended from time to

time) if said land is situated in Massachusetts; or out of similar legislation enacted in any other jurisdiction where the land may be situated, or out of any Federal legislation presently existing or hereafter enacted which may impose such encumbrances, liens or charges. In this connection, the Bank shall be entitled to receive from the Borrower such assurances, in form and substance, as in the particular circumstances the Bank may in its sole judgment consider sufficient and appropriate.

15. Lender shall be furnished with legal opinions from:

counsel to the Borrower relative to (i) the due organization, valid existence and good standing of the Borrower under the law of the state of its formation, with all requisite power and authority to construct, borrow money, operate, lease and mortgage property, and to perform all its obligations under the several loan documents evidencing and securing the Loan, (ii) the due authorization, execution, delivery and binding effect of all documents executed and delivered by the Borrower pursuant to this commitment letter, and (iii) such other matters relating to the transaction contemplated by this commitment letter as Lender may reasonably require; and

counsel acceptable to Lender's counsel opining that the proposed use and construction of the improvements comprising the project which is the subject matter of the loan, if constructed in accordance with the approved final plans and specifications, comply with all applicable zoning, subdivision, environmental and other Federal, State, County and Municipal laws, rules, regulations and ordinances.

16. The form and substance of all documents to be delivered to Lender at or prior to closing of the loan, including, but not by way of limitation, the Construction Loan Agreement and all other loan documents as are required to evidence or secure the loan contemplated by this commitment letter, the title and other insurance policies, the survey, the certification of architects and engineers, and any and all instruments collateral to the loan, including, without limitation, leases, construction contracts, and architectural and engineering agreements, shall in all respects be satisfactory to Lender and its legal counsel.

Further, there will be no lien or encumbrance attaching to the mortgaged property, even if such lien or encumbrance is inferior to the lien of the mortgage stipulated in paragraph 3 above, without the prior written consent of the Lender.

17. Whether or not any of the transactions contemplated by this commitment letter closes, the Borrower shall pay all Lender's

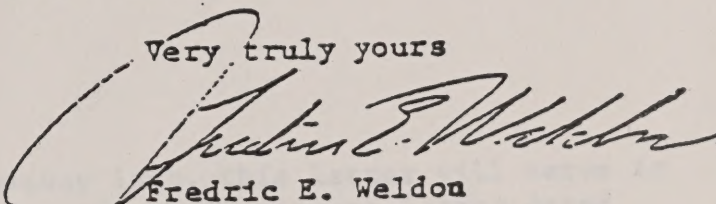
out-of-pocket costs and expenses incident thereto, including but without limitation, brokerage commissions, title company premiums and charges, recording and filing fees, documentary stamps, any mortgage recording tax or other tax imposed by reason of the execution and delivery of the Note and the recording of the Mortgage and other security loan documents, and the fees and expenses of counsel to Lender. The provisions of this paragraph shall survive any termination of this commitment, whether or not by reason of the consummation of the loan.

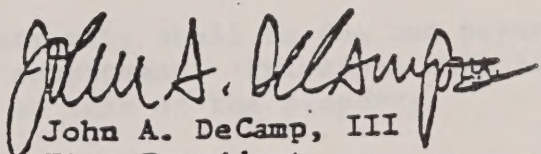
18. If and when this commitment letter is accepted and returned by the Borrower, the same shall be accompanied by a certified check in the sum of \$10,000 (the "Commitment Deposit") made payable to the order of the Lender. If the transaction hereby contemplated is for any reason (other than Lender's default) not consummated pursuant to the terms of this commitment letter, Lender shall have the right in its absolute discretion and without the requirement of any notice to Borrower to retain the proceeds of said Commitment Deposit as liquidated damages and not as a penalty. However, upon closing of the loan, the proceeds of said Commitment Deposit shall be applied in partial payment of the commitment fee payable to Lender at initial closing of the loan.
19. The Borrower and Lender mutually agree that, to the maximum extent permitted by law, the transactions contemplated by this commitment letter shall be governed by the law of the Commonwealth of Massachusetts, and all documentation incident to completing the transaction contemplated by this commitment letter shall be accepted, approved or acknowledged, as the case may be, at the offices of Lender in Boston, Massachusetts.
20. This commitment shall not be assigned without the prior written consent of the Lender.
21. The foregoing terms and conditions are predicated upon our present understanding of the proposed transaction. Upon development of a more comprehensive understanding of details relevant to the project, some further assurances of performance in the nature of additional security, or modifications of the financing and ownership arrangements may be required; however, this provision shall be automatically void from and after the construction loan closing.

Upon your acceptance of the terms of this commitment letter, the firm of Goulston & Storrs, One Federal Street, Boston, Massachusetts, shall commence representation of Lender in connection with the transaction contemplated by this commitment letter, with all fees and expenses incurred by Lender to be the Borrower's responsibility, as aforesaid.

This commitment shall not be effective or binding upon Lender until the enclosed copy of this letter, duly accepted by Borrower in the spaces provided therefor below, together with payment in the amount of the Commitment Deposit called for in paragraph 19 above, shall have been delivered to Lender. If such delivery has not been made within ten (10) days from the date hereof, we reserve the right at any time thereafter to terminate the commitment represented by this letter. Further, this commitment carries an expiration date of December 15, 1983 in the event that the loan represented by this commitment letter is not closed on or before such date.

Very truly yours


Fredric E. Weldon
Real Estate Division


John A. DeCamp, III
Vice President

FEW/jj

Enclosure

0775R

APPROVED: 

Richard H. Rubin

DATE: 10/18/83



THE FIRST NATIONAL BANK OF BOSTON

JOHN A. DeCAMP III
Vice President

October 12, 1983

Mr. Richard H. Rubin
11140 Rockville Pike
Rockville, MD 20852

Dear Dick:

To follow up our meeting of Tuesday last, this letter will serve as an amendment to and clarification of our commitment letter dated October 4, 1982:

1. The letter should be dated October 4, 1983.
2. For the term of the loan, interest only shall be due and payable in accordance with the terms of our commitment. Principal will be due at maturity or upon refinancing or sale of the property.
3. On page 3, para. 3, it is understood that the guaranty of Richard H. and Julia Lee Rubin shall be limited to completion only at such time as a permanent loan, refinancing agreement, or sale of the property in form and substance satisfactory to the Bank, is in full force and effect.
4. On page 4, para. 6, the Bank agrees that retainage will be 10% against construction items until such time as the project, in the opinion of the Bank and our Consulting Engineer, is 50% complete, following which, no retainage will be required.

It is further agreed that we will advance 100% of the loan funds allocated to the major subcontracts as prior approved by the Bank and its Consulting Engineer, upon receipt of a Lien Waiver in form and substance satisfactory to the Bank and its Counsel.

5. On page 6 in the first paragraph (unnumbered), in the 10th line, the word "as" should be changed to "is".

6. On page 6, para. 12, the amount of insurance required under Builder Risk Coverage is intended to cover the lender's loan amount 100%, and not 100% of the property value. The closing documents will address the specific binder provisions more fully.

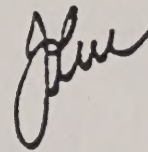
Mr. Richard H. Rubin

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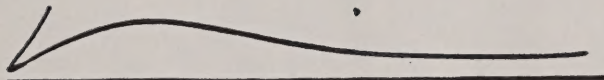
7. On page 9 in the closing sentence, the expiration date of the commitment is January 15, 1984.

All other terms and conditions of our commitment dated October 4, 1982 remain the same. If that letter together with the foregoing amendments are in accordance with your understanding, would you kindly execute both this letter and the original commitment, with the notation "as amended October 12, 1983", and return both to my attention.

Sincerely



APPROVED:


Richard H. Rubin

DATE: 10/18/83

